



Federal Communications Commission
Washington, D.C. 20554

December 15, 2004

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10 G Street, N.E.
Seventh Floor
Washington, D.C. 20002

DOCKET FILE COPY ORIGINAL

Re: Snake River Personal Communications Services Informal Request for Commission Action;
WT Docket No. 04-464 264

Dear Ms. Bennet:

For the reasons discussed below, we deny the above-referenced Informal Request for Commission Action filed by Snake River Personal Communications Services (Snake River).¹

1. Background

On July 8, 2004, Qwest Wireless, LLC (Qwest Wireless), and Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless) filed a joint application to assign sixty-two broadband PCS licenses and related assets from Qwest Wireless to Verizon Wireless.² On July 22, 2004, the Commission released a Public Notice that established a pleading cycle regarding the application.³ Petitions or comments were due by August 23, 2004; oppositions were due by September 2, 2004; and replies were due by September 10, 2004.⁴

On September 13, 2004, after the conclusion of the pleading period specified in the Public Notice, Snake River filed the Informal Request for Commission Action with regard to the assignment application.⁵ Snake River notes that it "does not oppose the acquisition and therefore did not file a petition to deny the assignment of licenses."⁶ Snake River contends that it has built a CDMA network and entered into a favorable roaming arrangement with Qwest Wireless that allows Snake River's subscribers to use Qwest Wireless's network at affordable rates.⁷ Snake River also has a roaming

¹ CTC Telecom Inc., Eagle Telephone System, Incorporated, Farmers Mutual Telephone Company, and Rural Telephone Company d/b/a collectively as Snake River Personal Communications Services Informal Request for Commission Action, WT Dkt. No. 04-264, filed Sept. 13, 2004 (Informal Request).

² ULS File No. 0001789538, filed July 8, 2004.

³ Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless Seek Commission Consent for the Assignment of Sixty-Two Broadband Personal Communications Services Licenses, *Public Notice*, WT Dkt. No. 04-264, 19 FCC Rcd 13319 (2004) (Public Notice).

⁴ *Id.*

⁵ 47 C.F.R. § 1.41 sets forth the procedures for filing an Informal Request.

⁶ Informal Request at 2 n. 3.

⁷ *Id.* at 2.

agreement with Verizon Wireless.⁸ The non-disclosure provisions of that agreement prohibit Snake River from revealing its terms and conditions. Snake River claims it has learned that its roaming agreement with Qwest Wireless “is not being assigned to Verizon Wireless and is expected to terminate once the asset purchase closes.”⁹ According to Snake River, “[w]ithout this favorable roaming arrangement being adopted by Verizon Wireless, Snake River will not be in a position to offer its subscriber base competitive terms and conditions.”¹⁰ Snake River believes that the assignment of the wireless licenses to Verizon Wireless will result in consolidation within the CMRS market in Idaho that may irreparably harm Snake River. Therefore, Snake River asks the Commission to “investigate Verizon Wireless’s roaming practices with regard to small wireless carriers such as Snake River before acting upon the pending application.”¹¹ If the Commission decides to grant the assignment application, Snake River asks that the Commission, at a minimum, consider conditioning the Verizon Wireless/Qwest Wireless assignment of licenses on “requiring Verizon Wireless to allow roaming access to the merged network by subscribers of Snake River and similarly situated subscribers of other rural wireless carriers at affordable rates” and “ensuring that Verizon Wireless subscribers can access Snake River’s CMRS network and other rural wireless carriers’ networks at affordable rates.”¹²

Qwest Wireless and Verizon Wireless filed an opposition to Snake River’s Informal Request.¹³ The Opposition sets forth the following reasons for the Commission to deny Snake River’s Informal Request. First, the applicants argue that Commission rules do not require carriers to enter into automatic roaming agreements with any carriers, and that section 20.12 of the Commission’s rules¹⁴ only mandates manual roaming.¹⁵ Second, Qwest Wireless and Verizon Wireless assert that Snake River has raised no facts indicating that market forces are insufficient to meet the Commission’s objectives.¹⁶ The applicants point out that, after the Commission rejected the request to impose automatic roaming agreements on CMRS providers, Snake River was able to negotiate a roaming agreement with Qwest Wireless which, Snake River admits, is reasonable.¹⁷ Third, the applicants contend that the grant of the license assignment will have no effect on Snake River’s existing roaming agreements.¹⁸ Since Qwest announced that it was

⁸ *Id.* at 3; Reply at 3.

⁹ Informal Request at 3.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 3.

¹² *Id.* at 5.

¹³ Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless Opposition to Snake River Request for Informal Action, WT Dkt. No. 04-264, filed Sept. 24, 2004 (Opposition).

¹⁴ 47 C.F.R. § 20.12.

¹⁵ Opposition at 2-3.

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ *Id.* at 4.

leaving the facilities-based CMRS business, the applicants argue that Snake River's roaming agreement with Qwest Wireless would have terminated irrespective of the current proposed transaction.¹⁹ Fourth, applicants dispute Snake River's concerns about consolidation in the CMRS industry because Qwest Wireless and Verizon Wireless will remain competitors.²⁰ Fifth, the applicants argue that Snake River's concerns about the impact that consolidation in the CMRS industry will have on roaming with small rural providers is more appropriately addressed in the context of a rulemaking proceeding rather than in a license assignment proceeding.²¹ Finally, the applicants argue that Snake River has alleged no specific harm appropriate for redress by the Commission.²² Although Snake River claims that it "may" suffer irreparable harm if the license assignment is granted, the applicants point out that Snake River has a roaming agreement with Verizon Wireless.²³

Snake River filed a reply to the Qwest Wireless and Verizon Wireless Opposition.²⁴ Snake River acknowledges that the Commission's rules do not currently require carriers to provide automatic roaming, but asserts that the Commission's public interest analysis with respect to the proposed assignment of licenses should take into account the competitive effects of the proposed transaction, including any significant anticompetitive concerns.²⁵ According to Snake River, if it does not have automatic roaming with respect to Verizon Wireless's markets, its customers will switch to other service providers.²⁶ Snake River also argues that the proposed transaction is further evidence of major market consolidation in the wireless industry.²⁷ Finally, Snake River asserts that its claims are properly raised, are not speculative, and should be addressed in the context of this specific transaction.²⁸

2. Discussion

We deny Snake River's Informal Request that the Commission either investigate Verizon Wireless's roaming practices with small rural CMRS carriers or impose a specific condition on the grant of the application to assign wireless licenses from Qwest Wireless to Verizon Wireless to require that

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 4-5.

²² *Id.* at 5-6.

²³ *Id.*

²⁴ CTC Telecom Inc., Eagle Telephone System, Incorporated, Farmers Mutual Telephone Company, and Rural Telephone Company d/b/a collectively as Snake River Personal Communications Services Reply to Qwest/Verizon Wireless Opposition to Snake River Request for Informal Action, WT Dkt. No. 040264, filed Oct. 1, 2004 (Reply).

²⁵ Reply at 2-3.

²⁶ *Id.* at 3-4.

²⁷ *Id.* at 6.

²⁸ *Id.* at 6-7.

Snake River subscribers and the subscribers of other similarly situated small CMRS carriers be able to roam on Verizon Wireless's network at affordable rates.

The Commission has wide discretion when determining whether, and to what extent, discovery is necessary in its administrative proceedings.²⁹ Here, Snake River seeks a broad investigation into "the roaming practices of Verizon Wireless" with small rural CMRS providers.³⁰ Notwithstanding Snake River's claims, Snake River presents no arguments that persuade us that we need to conduct an investigation to address its concerns. Snake River does not allege that Verizon Wireless has, in the past, engaged in exclusionary, discriminatory, or unreasonable behavior with it or other small, rural, CMRS providers. In fact, Snake River admits it currently has a roaming agreement with Verizon Wireless.³¹ Nor has Snake River explained why administrative proceedings, brought under Section 208 of the Communications Act of 1934, would be insufficient to address any discriminatory roaming rates Verizon Wireless may charge in the future. Those proceedings provide parties with a forum to investigate fact-specific claims of unlawful discriminatory pricing.³² It does not appear that Snake River's concerns about Verizon Wireless's roaming practices are serious, or imminent, enough to impede the license assignment application, because Snake River did not file a petition to deny and specifically stated that it did not oppose the assignment of licenses. We are not inclined to delay a decision in a license assignment proceeding, by granting a late-filed request for broad discovery or investigation into an assignment applicant's roaming agreements, when the party making that request has not alleged that the proposed assignee's past roaming agreements are unlawful and has not demonstrated why a Section 208 proceeding cannot adequately address possible unlawful behavior in the future.

Snake River's alternative request that we place conditions upon Verizon Wireless fares no better. Section 303 (r) of the Communications Act of 1934 gives the Commission statutory authority to place conditions, not inconsistent with law, upon the grant of licenses.³³ As noted above, Snake River has not alleged that Verizon Wireless has engaged in exclusionary, discriminatory, or unreasonable behavior with it or other small rural CMRS carriers, nor has it opposed the assignment of licenses. We conclude that it would not be a proper exercise of agency discretion to condition the license assignment upon the requirement that Verizon Wireless permit Snake River subscribers to roam on Verizon Wireless's network at a specified rate. To grant such a condition, under these circumstances, would be to impose a condition on the basis of speculation. That would be inconsistent with Commission precedent.³⁴

²⁹ "[T]he conduct and extent of discovery in agency proceedings is a matter ordinarily entrusted to the expert agency in the first instance and will not, barring the most extraordinary circumstances, warrant the Draconian sanction of overturning a reasoned agency decision." *Hi-Tech Furnace Systems v. FCC*, 224 F.3d 781, 789 (D.C. Cir. 2000), quoting, *Trailway Lines v. ICC*, 766 F.2d 1537, 1546 (D.C. Cir. 1985).

³⁰ Informal Request at 1.

³¹ Informal Request at 3; Reply at 3.

³² 47 U.S.C. 208(a). See also *Global Crossing Telecommunications, Inc. v. FCC*, 259 F.3d 740, 748 (2001).

³³ 47 U.S.C. 303(r). See also *In the Matter of Applications of AT&T Wireless Services, Inc., and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, *Memorandum Opinion & Order*, 2004 WL 2387511 ¶ 43 (rel. Oct. 26, 2004).

³⁴ See, e.g., *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., to AT&T Corp.*, *Memorandum Opinion & Order*, 14 FCC Rcd. 3160, 3176, ¶ 28 (1999); *In Re Applications of Turner Broadcasting System, Inc., and Time Warner, Inc.*, for

3. Conclusion

For the foregoing reasons, we deny Snake River's Informal Request. This action is taken pursuant to authority delegated by Section 0.331.³⁵

Sincerely,

A handwritten signature in black ink that reads "Katherine M. Harris". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Katherine M. Harris
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

cc: Daphne Butler
John T. Scott, III

Consent to the Transfer of Control of License of WTBS (TV), *Memorandum Opinion & Order*, 11 FCC Rcd. 19595, 19609-19610, ¶¶ 31-35 (1996).

³⁵ 47 C.F.R. § 0.331.